

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DENNIS KOLASA, individually and on	)	
behalf of all other similarly situated,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 17-1087
v.	)	Judge Nora Barry Fischer
	)	Chief Magistrate Judge Maureen P.
BOS SOLUTIONS, INC.,	)	Kelly
	)	
Defendants.	)	

**ORDER OF COURT**

AND NOW, this day of 10<sup>th</sup> day of July, 2018, after Plaintiff filed the above-captioned class and collective action against Defendant, (Docket No. [1]), Defendant filed an Answer to the Complaint, (Docket No. [8]), and Plaintiff filed a Motion to Certify Class Pursuant to 29 U.S.C. § 216(b), (Docket No. [45]), and Brief in Support, (Docket No. [46]), to which Defendant filed a Response in Opposition, (Docket No. [62]), Plaintiff filed a Reply, (Docket No. [65]) and Defendant filed a Sur-Reply, (Docket No. [66]), and after a Report and Recommendation was filed by Chief United States Magistrate Judge Kelly on May 10, 2018 recommending that Plaintiff's Motion be granted, (Docket No. [72]), and granting the parties until May 24, 2018, to file written objections thereto, and upon consideration of the objections filed by Defendant on May 24, 2018 (Docket No. [74]), Plaintiff's Response in Opposition filed on June 8, 2018, (Docket No. [76]), and Defendant's Reply filed on June 15, 2018, (Docket No. [89]), and upon independent review of the record and consideration of the Chief Magistrate Judge Kelly's Report and Recommendation, (Docket No. [72]), which is adopted as the opinion of this Court,

IT IS HEREBY ORDERED that Defendant's Objections [74] are OVERRULED.

In so holding, the Court acknowledges the parties' dispute as to whether the present objections should be reviewed under the *de novo* standard on dispositive matters or the lesser "clearly erroneous or contrary to law" on nondispositive pretrial matters but need not resolve this issue as the Court would affirm under the *de novo* standard. (See Docket Nos. 74; 76; 89). To this end, having carefully considered such objections in light of the record, this Court agrees with the recommended disposition as Chief Magistrate Judge Kelly rightly concluded that Plaintiff met his burden of making a modest factual showing that the proposed plaintiffs are similarly situated sufficient to support conditional certification at this juncture. Contrary to Defendant's objections that Chief Magistrate Judge Kelly misinterpreted and/or failed to apply the legal principles articulated by this Court in *Hodzic v. Fedex Package System, Inc.*, 2016 WL 6248078 (W.D. Pa. Oct. 26, 2016) and *McLaughlin v. Seneca Resources Corp.*, 2018 WL 623499 (W.D. Pa. Jan. 30, 2018), the Court finds the Report and Recommendation to be consistent with both of those decisions based on the record evidence presented at this juncture of the case. Indeed, neither *Hodzic* nor *McLaughlin* support the relief requested by Defendant, i.e., a denial of the motion for conditional certification. The Court further notes twenty-three additional individuals have filed opt-in notices since the Report and Recommendation was filed which further buttresses the Opinion of the Court that this matter should be conditionally certified. (See Docket Nos. 73; 77-81; 83-85; 88; 90-94). All told, Defendant's objections are overruled.

IT IS FURTHER ORDERED that Plaintiff's Motion for Conditional Certification [45] is GRANTED and the following class is conditionally certified pursuant to 29 U.S.C. § 219(b):

**ALL CURRENT AND FORMER SOLIDS CONTROL  
TECHNICIANS EMPLOYED BY, OR WORKING ON  
BEHALF OF BOS SOLUTIONS, INC. WHO WERE  
CLASSIFIED AS INDEPENDENT CONTRACTORS AND  
PAID ON A DAY RATE BASIS AND NOT PAID  
OVERTIME DURING THE LAST THREE (3) YEARS.**

ACCORDINGLY, IT IS FURTHER ORDERED this matter is referred back to  
Chief Magistrate Judge Kelly to enter any appropriate orders to facilitate the provision of notice  
to prospective members of the collective action and to conduct further proceedings, as necessary.

*s/Nora Barry Fischer*  
Nora Barry Fischer  
United States District Judge

cc/ecf: All counsel of record.  
Chief Magistrate Judge Maureen P. Kelly